Ontario
Ministry of Labour

Presentation to

The Commission to Investigate the Introduction and Spread of Severe Acute Respiratory Syndrome (SARS)

November 17, 2003

Good afternoon, Your Honour

Before I say anything else, I would like to acknowledge the loss and grief of SARS victims and their families, and offer my sincere condolences. I would also like to acknowledge the professionalism, bravery and extraordinary efforts of all the health care providers who coped with this situation. When all is said and done, it was the selfless dedication of these workers that turned the tide.

On behalf my colleagues who worked so hard during this crisis, and the whole of the Ministry of Labour, I would like to thank you for this opportunity to contribute to the crucial work of your inquiry.

Before I start, I would like to tell you something about myself. I graduated from Queen's University with a BSc in mining engineering in 1973 and joined the Ministry of Labour in 1975 as a district mining engineer. Part of my duties included inspecting mines for health and safety compliance.

Subsequently I became area engineer and later, chief mining engineer for the province. In 1987, I was named Director of Mining and later, Regional Director for the Ministry of Labour in Northern Ontario.

In 1997, I was appointed Assistant Deputy Minister of Operations for the Ministry. This position included oversight of the Ministry's occupational health and safety inspection function as well as the employment standards program.

In 2000, I was appointed Assistant Deputy Minister in the Ministry of Consumer and Business Services and in 2003, was named Deputy Minister of Labour.

IÊm here today to provide you with information on how the Ministry of Labour, in its specific role as a regulator, deals with workplace health and safety, and emergencies such as the SARS crisis.

My presentation today will take you through the occupational health and safety system in Ontario, explain the principles behind the *Occupational Health and Safety Act*, discuss the application of the *Occupational Health and Safety Act* to health care facilities, and discuss the response of the Ministry of Labour to the emergency and the challenges that faced the Ministry.

SARS was an unforeseen and unique situation with little scientific knowledge available at the outset about its method of transmission or how to prevent its transmission. When the SARS emergency was declared, the Ministry of Labour realized that not only health care facilities, but also all workplaces could be affected. It is important to keep in mind that the government adopted a coordinated response to the SARS emergency and that the Ministry of Labour worked as one of the parties within a much larger structure.

Also, contrary to the allegations set out in the submissions we have been asked to respond to,

- the Ministry was actively involved in dealing with the SARS emergency as early as March 24, 2003, prior to the declaration of the provincial emergency,
- the Ministry immediately adopted a heightened response to the SARS emergency, which included health care workers,
- the Ministry gives priority to work refusals and complaints by workers who have a limited right to refuse work under the *Occupational Health and Safety Act*,

- the Ministry rejects the suggestion that there was a „deliberate attempt on the part of the Ministry of Labour to curtail the enforcement activities of its inspectorate from the beginning of the crisis‟.

The Ministry takes its enforcement role seriously. We assigned our best people to ensure an effective response to the SARS emergency; we worked diligently, accessing the best available science to ensure a strategic and comprehensive approach to dealing with SARS.

OCCUPATIONAL HEALTH AND SAFETY SYSTEM IN ONTARIO

In order to understand the Ministry of Labour's role and the challenges faced during the emergency, it is important to begin by explaining how the occupational health and safety system in Ontario works.

The occupational health and safety system in this province has three institutional components: the Ministry of Labour, the Workplace Safety and Insurance Board and the health and safety associations, training centres and clinics. The Ministry's role in this three-part system is to administer and enforce the *Occupational Health and Safety Act* and its Regulations. The Workplace Safety and Insurance Board, in addition to its programs for injured workers, is responsible for prevention of workplace injuries and illnesses. The health and safety associations, training centres and clinics provide support and education to workplace parties.

In addition to administering and enforcing legislation relating to occupational health and safety, the Ministry is also responsible for employment rights and responsibilities and labour relations in Ontario. The focus of my comments to you today relates primarily to issues of health and safety of workers and the *Occupational Health and Safety Act.* The Ministry is also responsible for the *Employment Standards Act.* This *Act* sets out minimum employment rights and responsibilities and will be briefly mentioned by me

today.

The *Occupational Health and Safety Act*

The *Occupational Health and Safety Act* and its regulations set out minimum standards which must be met at all times in Ontario workplaces, even during an emergency. The workplace parties may choose to exceed the legislated standards. The *Act* sets out specific duties and responsibilities for employers, supervisors, workers, owners of workplaces, and for directors and officers of corporations.

- Among other duties employers must: provide information, instruction, and supervision to a worker to protect the worker's health and safety; appoint a competent person as a supervisor; acquaint a worker or person in authority over a worker with any hazard in the work; afford assistance and cooperation to a Joint Health and Safety Committee; and, take every precaution reasonable in the circumstances for the protection of a worker.

- Supervisors responsibilities include ensuring that workers use or wear the equipment, protective devices or clothing that the workers employer requires to be used or worn; advise workers, when aware, of the existence of any potential or actual danger to their health or safety; and, take every precaution reasonable in the circumstances for the protection of a worker.

- Workers shall work in compliance with the *Act* and regulations; use or wear equipment, protective devices or clothing that the workers employer requires to be worn and, where aware, report the absence of or defects in equipment or protective devices and any contravention of the *Act* or regulations.

The *Act* requires employers to establish and maintain Joint Health and Safety Committees in almost all workplaces with 20 or more workers. These committees must be composed of both management and worker representatives. Workplaces with 5 to 19 workers are required to have a health and safety representative.

Internal Responsibility System

Employers, workers and others in the workplace share the responsibility for occupational health and safety. Each party is responsible to act to the extent of the authority that they have in the workplace. This concept of the internal responsibility system is based on the principle that the workplace parties themselves are in the best position to identify health and safety problems and to develop solutions. This concept emerged from the Royal Commission into health and safety in mines in Ontario in 1976 and was soon adopted as the basis of the new *Occupational Health and Safety Act* in 1978. Other jurisdictions across Canada have used the same approach.

The internal responsibility system involves everyone, from the chief executive officer and the Board of Directors to the frontline worker. How well the system works in a particular workplace depends upon everyone in the workplace using his or her knowledge, skills, training and experience to ensure work is done in a safe and healthy manner. There must be a visible, demonstrated commitment to health and safety at the top, and a complete, unbroken chain of responsibility and accountability for health and safety throughout the organization.

Joint Health and Safety Committees are an important support for the internal responsibility system in the workplace and provide workers with a mechanism to participate in health and safety matters at the workplace. This includes the power to inspect the workplace regularly, to identify hazards, to review safety-related policies and procedures, and to make recommendations to which the employer must respond in writing. A well functioning Committee acts as an internal check on the health and safety system in the workplace, and is an important means of managing communication with employee representatives.

Occupational Health and Safety Act and Health Care Facilities

The *Occupational Health and Safety Act* applies to almost all workplaces, including health care facilities. As mentioned earlier, workplaces including health care facilities with 20 or more workers are required under the *Act* to establish and maintain Joint Health and Safety Committees. The Health Care and Residential Facilities Regulation made under the *Act* specifically applies to the health care sector. The Regulation sets out minimum standards for such things as personal protective equipment, ventilation, heating, lighting, hygiene facilities, work surfaces, restricted and confined spaces, equipment, compressed gas cylinders, ladders, scaffolds, explosive hazards, anaesthetic gases, flammable liquids, material handling and housekeeping and waste.

It also requires the employer to develop, establish and put into effect written measures and procedures for worker health and safety. These include: safe work practices and working conditions; proper hygiene practices and use of hygiene facilities; infection control; hazards of and measures to protect workers from exposure to biological, chemical and physical agents; the proper use, maintenance and operation of equipment; the reporting of unsafe equipment; and the use, wearing and care of personal protective equipment and its limitations. The employer is also required under the Regulation to consult with and consider recommendations made by the workplace Joint Health and Safety Committee to develop, establish and provide training and educational programs in health and safety measures and procedures.

Most larger employers be they in manufacturing, petrochemical, health care or other sectors have access to considerable resources and knowledge. It is expected that these workplaces will use these resources and knowledge in addressing health and safety issues through their internal responsibility system.

ENFORCEMENT STRATEGY

In allocating its enforcement resources, the Ministry of Labour sub-divides industries in Ontario into 29 industrial sectors, one of which is the health care sector.

The Ministry considers the relative numbers of workplaces and workers in each sector and conducts an annual risk assessment, using the five most recent years of worker injury and fatality data, to rank the 29 industrial sectors and to allocate inspection resources according to the risk in each sector. High-risk hazards within each sector are also identified.

Information on the previous occupational health and safety performance of each sector, e.g., orders issued, work refusals, and complaints, is used to develop appropriate field delivery strategies for inspectors to address specific workplace hazards and issues. The sector strategy also includes advice to inspectors on how to reinforce the internal responsibility system and promote workplace self-reliance.

Based on this analysis, the Ministry sets annual sector strategies that detail total numbers of workplace visits to be made, key hazards, emerging health and safety issues and appropriate field delivery strategies for inspectors.

In the fiscal year 2002-03, the Industrial Health and Safety Program of the Ministry made 972 field visits to health care facilities. These included 532 proactive inspections. A total of 658 orders were issued during those visits. The Ministry follows up to ensure that orders have been complied with.

THE SARS EMERGENCY

The outbreak of SARS required the Ministry of Labour to apply considerable resources to deal with the emergency while continuing to carry out its inspections, investigations and enforcement activities in all sectors across the province.

The SARS emergency was unforeseen and unique and lasted several months. Agencies around the world struggled to cope with this new and infectious disease.

SARS was a communicable disease with occupational health and safety implications. Health care workers cared for patients with the SARS virus. As well, SARS could have affected any workplace in the province if a SARS infected worker or customer was in the workplace. Accordingly SARS became a very real and significant workplace hazard.

At the beginning of the outbreak, scientific knowledge about how SARS is spread and how workers should be protected was limited. The scientific knowledge on how SARS is spread evolved over the course of the emergency and continues to evolve to this day.

As you know, on March 26, 2003, the Premier of Ontario declared that an emergency existed throughout Ontario. This emergency, the first to be declared under provincial statute in Ontario, concerned the outbreak of a new, dangerous, emerging infectious disease, Severe Acute Respiratory Syndrome (SARS).

ACTIONS TAKEN BY THE MINISTRY DURING THE EMERGENCY

Even before the official declaration of the emergency, Ministry staff were already taking action to deal with the situation. I would like to highlight some of the actions we took.

- On March 24, 2003, the Ministry received the first complaint relating to SARS from a worker representative regarding management's response to the hospitalization of health care workers at Scarborough Hospital – Grace Division.

The complaint was assigned to an inspector who contacted a Ministry physician who in turn telephoned the hospital on March 24 advising both the Director of Occupational Health and Safety and a Human Resources representative about the requirements under the *Occupational Health and Safety Act* to notify the Ministry of Labour of occupational illnesses. In addition the Ontario Nurses Association was contacted. The Ministry physician also discussed infection control measures with the hospital. The Ministry of Labour physician was told that they were receiving assistance from both Toronto Public Health and Mt. Sinai Hospital and were also in contact with Health Canada.

- On March 25, 2003, the Ministry of Labour physician spoke with a Toronto Public Health physician who confirmed that Toronto Public Health was attending at the Scarborough hospital to assist with infection control measures. On March 26, the physician from Toronto Public Health also confirmed that Toronto Public Health was investigating health care workers exhibiting SARS symptoms. The Ministry of Labour confirmed that Toronto Public Health was leading the investigations relating to the control of SARS and its spread to health care workers. This is in accordance with the 1984 agreement between the Ministry of Labour and the Ministry of Health.

  Since 1984 the Ministry of Labour has been party to an agreement establishing lines of responsibilities where there are suspected outbreaks of infectious diseases in workplaces. This agreement provides that the Ministry of Labour has a general responsibility for investigating hazards in a workplace under the *Occupational Health and Safety Act* and that the local Medical Officer of Health has responsibility for the identification, investigation and control of outbreaks of communicable diseases. It also provides that where the local Medical Officer of Health decides to take charge of an investigation and control of an outbreak the Ministry of Labour will assist.

- On May 27, 2003, a Ministry of Labour physician was contacted by a worker at North York General Hospital who raised a concern about infection controls in the emergency department. The Ministry of Labour physician, after contacting a North York General Hospital occupational health representative, contacted the Director of Communicable Disease at Toronto Public Health regarding this concern. The Ministry of Labour physician was advised that Toronto Public Health was aware of the concern and their inspectors were in the hospital doing contact tracing. The Ministry of Labour physician specifically requested that the inspectors attend at the emergency department to review the worker concerns which had been communicated to the Ministry of Labour. Toronto Public Health agreed to do so.

In addition,

- the Ministry of Labour worked with the Provincial Operations Centre and the Ministry of Health and Long-Term Care. The Provincial Operations Centre led Ontario's response to SARS with the Ministry of Health and Long-Term Care assuming a lead role in the response to SARS. Experts from all levels of government coordinated their efforts to provide advice and information to the public and institutions in key areas involving the emergency. These included public health, safety and security, science and health care provision. Provincial Operations Centre officials worked together with local public health authorities, health care providers, emergency services, hospitals, long-term care facilities and other institutions and individuals to identify and communicate the steps required to control the spread of this new infectious disease.

- Ministry of Labour employees at the Provincial Operations Centre coordinated Ministry professional, technical and operational support to the Centre.

- The Ministry of Labour dedicated an expert occupational health physician to the Ontario SARS Scientific Advisory Committee. This committee was established by the Provincial Operations Centre and was made up of key experts in the health care sector. The Ministry of Labour physician in collaboration with the other members of the Science Group contributed infection control advice for the protection of workers, and provided advice regarding the requirements under the *Occupational Health and Safety Act* and the regulations for worker health and safety in the health care sector. He was also active in gathering scientific information about this new disease. The Committee continuously worked on the directives using expertise of its members and emerging information from world experts such as the Centres of Disease Control and Prevention, Health Canada and the World Health Organization.

- The Ministry of Labour established an internal Command Centre that was staffed with health and safety specialists, occupational health physicians and industrial hygienists and was supported by human resources, legal and communications staff. This was to ensure an effective, consistent and timely response to the emergency across the province.

- The Ministry of Labour Command Centre monitored Provincial Operations Centre directives being issued to health care facilities in the context of worker health and safety. It also consulted with the Ontario SARS Scientific Advisory Committee on issues affecting health care workers, such as workplace hygiene and the use of respirators. The Command Centre provided training, updated information and technical advice to Ministry field staff relating to SARS. It also served as a conduit for information to and from the Provincial Operations Centre and to and from the Ontario SARS Scientific Advisory Committee.

- The Ministry put in place an internal protocol to establish an effective response to work refusals and complaints at the outset of the emergency. Initially managers (inspectors under the *Occupational Health and Safety Act*) responded to SARS related work refusals and complaints from any workplace in the province. As the workload due to SARS and related issues increased, additional experienced staff were deployed to carry out SARS related investigations. Investigations of work refusals included discussions over the telephone, face-to-face meetings with workplace parties and on-site investigations where appropriate. This addressed the very real concern that Ministry of Labour inspectors not be exposed to disease and the possibility of quarantine. Such a quarantine would limit the Ministry's ability to continue to respond to other workplaces under the *Occupational Health and Safety Act*. The protocol required managers to maintain regular contact with the Ministry Command Centre where they had access to the most up to date information on SARS and to medical, legal and scientific advice. I have attached this protocol to my written presentation.

- There have been allegations made that a draft protocol dated March 26, 2003 prohibited Ministry of Labour staff from attending at any SARS affected workplace even in the case of a work refusal. This was not the final protocol that was implemented. I have attached the correct protocol, effective April 2, 2003. This protocol clearly shows that, if required, a manager would attend at the SARS affected workplace to investigate a complaint or a work refusal. There was no attempt by the Ministry to curtail the enforcement activities of its inspectorate.

- The Ministry prepared SARS-related information to assist workplaces in dealing with the emergency, including frequently asked questions and answers, a checklist for workplaces, workplace issues related to SARS and workplace laws and SARS. This information was posted on the Ministry website on April 1, 2003 and updated on an ongoing basis throughout the emergency. The Ministry of Labour website also provided direct linkages to various websites including the SARS

financial assistance program, Ontario Fire Service bulletins, the Ministry of Health and Long-Term Care, the Workplace Safety and Insurance Board, Human Resources Development Canada and to news releases issued by the Premier's Office. Information was emailed directly to 1,800 stakeholders and during the emergency more than 20,000 people accessed this information on the Ministry of Labour website.

- Because of concerns raised by key stakeholders indicating the need for better information sharing, the Ministry of Labour's Assistant Deputy Minister for Operations requested that regular meetings be convened involving stakeholders. These included, the Ministry of Long-Term Care, the Ontario Hospital Association, and the health care unions including: the Ontario Nurses Association, Ontario Public Service Employees Union, Canadian Union of Public Employees, and Service Employees International Union. The first meeting took place on April 1, 2003. Subsequent meetings were held on or about April 4th, 8th, 11th, 17th, 22nd, 24th, 29th, May 1st, and 7th. On May 7, 2003, the Ontario Hospital Association's representative advised that the teleconferences would end.

  These meetings provided an ongoing forum for discussing and clarifying information regarding SARS and protective measures. At these meetings, the Ministry reinforced the duties and responsibilities in the *Occupational Health and Safety Act* and the Regulation for Health Care and Residential Facilities and provided a forum for discussion of issues relating to rights and responsibilities under the *Employment Standards Act*.

  With respect to the issue regarding pregnant workers, during the May 7, 2003 meeting, a Ministry of Labour physician advised the Ontario Nurses Association that in some individual cases there may be physical difficulties during the third trimester but that each case would require individual evaluation. In addition, by an email dated May 7, 2003, the Ministry of Labour physician advised the Ontario Hospital Association that "Pregnancy is not a contra-indication for respirator use.

Some pregnant workers however, especially in the third trimester, may have reduced capability to tolerate wearing a respirator. Individual evaluation is required."

- The Ministry responded to questions raised by the Ontario Nurses Association. Specifically a Ministry of Labour physician wrote to the Ontario Nurses Association's labour relations specialist on April 15, 2003, providing a detailed response to among other things, the use and care of N-95 respirators. For example, the Ontario Nurses Association was advised that N-95 respirators are not effective if the user has a beard.

- The Ministry responded promptly and investigated all 54 work refusals related to SARS, 18 of which were made by workers in the health care sector. Where appropriate, orders were issued to comply with the *Occupational Health and Safety Act.*

  The term work refusal refers to the right of workers under the *Occupational Health and Safety Act* to refuse unsafe work. If a work refusal cannot be resolved by an internal investigation within the workplace involving the worker, supervisor and worker representative of the Joint Health and Safety Committee, the work refusal is reported to and investigated by the Ministry of Labour.

  Police, fire fighters, persons employed in correctional facilities and most health care workers have a limited right to refuse unsafe work. They cannot refuse work when circumstances of the refusal are inherent in the worker's work or are a normal condition of the worker's employment; or when the worker's refusal to work would directly endanger the life, health or safety of another person.

- The first work refusals were reported to the Ministry on March 27, 2003 and involved workers at a Ministry of Transportation driver examination centre. The Ministry immediately investigated.

- The first work refusal relating to a health care institution was reported to the Ministry on June 6, 2003. The Ministry investigated and orders relating to respiratory training and fit-testing were issued on June 9, 2003. In fact, as early as May 8, 2003, the Ministry issued orders to Providence Continuing Care Centre in Brockville relating to training workers who were required to wear the N-95 respirator.

- On June 12, the Ministry initiated a series of consultations at other health care facilities that were identified as having a risk of SARS transmission to their workers. The health care facilities were categorized based on potential SARS exposure. The facilities were listed as Category 0 to 3, with Category 0 being hospitals with no known cases of SARS. During these consultations the Ministry reviewed infection control precautions, use of respirators and respirator fit testing and the function of the internal responsibility system. As a result of the consultations and complaints, a total of 16 orders were issued under the *Occupational Health and Safety Act* and regulations to five of ten health care facilities. I will provide you with copies of these orders if you wish. The orders included undertaking risk assessments and providing and fit-testing respirators to all health care workers in high-risk areas. No violations of the *Act* or regulations were found in five of the institutions.

  The consultation at Mt. Sinai Hospital did not take place as scheduled. The hospital had been reclassified to a Category 0 (no known cases of SARS).

- The Ministry of Labour developed the policy for Part 1 of *The* SARS *Assistance and Recovery Strategy Act, 2003* to ensure that employees are entitled to an unpaid leave of absence for SARS related reasons and to reinstatement when they are able to return to work. The Bill was passed on May 5, 2003 at the height of the emergency.

IN CONCLUSION

At the Ministry of Labour, we are committed to ensuring the highest standards of occupational health and safety are practiced in the Province of Ontario. The outbreak of SARS in Ontario presented a tremendous challenge for frontline health care workers, other workplaces, scientific experts, and officials in the province and affected the lives of thousands of citizens. At the Ministry of Labour we have already learned from our experience in battling the SARS provincial emergency. The Ministry is revising its health care sector strategy to include a greater emphasis on infection control programs. In order to implement this strategy, inspectors will be provided with training on infection control practices. Proactive inspections will be done in health care facilities on their infection control programs, including respiratory protection and needle stick injury prevention to ensure worker health and safety. We will be consulting with members of Joint Health and Safety Committees.

We are committed to continuing to build from our experience and are looking forward to the recommendations that will be coming from this Commission and Dr. David Walker's panel on Infectious Disease Control. The Ministry of Labour will work with our Ontario Government partners in responding to these recommendations. To improve occupational health and safety practices will require a commitment from all of the stakeholders in the health and safety sector. At the Ministry of Labour we will support the partners in the system in their efforts to learn from their experience and build on the recommendations from both of these reviews.

Thank you for the opportunity to address the Commission.